IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 74 of 2005
To
SECOND APPEAL No. 82 of 2005
With
CIVIL APPLICATION No. 4137 of 2005
In
SECOND APPEAL No. 74 of 2005
With
SECOND APPEAL No. 75 of 2005
With
CIVIL APPLICATION No. 4138 of 2005
With
SECOND APPEAL No. 76 of 2005
With
CIVIL APPLICATION No. 4139 of 2005
With
SECOND APPEAL No. 77 of 2005
With
CIVIL APPLICATION No. 4140 of 2005
With
SECOND APPEAL No. 78 of 2005
With
CIVIL APPLICATION No. 4141 of 2005
With
SECOND APPEAL No. 79 of 2005
With
CIVIL APPLICATION No. 4142 of 2005
With
SECOND APPEAL No. 80 of 2005
With
CIVIL APPLICATION No. 4143 of 2005
With
SECOND APPEAL No. 81 of 2005
With
CIVIL APPLICATION No. 4144 of 2005
With
SECOND APPEAL No. 82 of 2005
With
CIVIL APPLICATION No. 4145 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ADMINISTRATICE OFFICER MUNICIPAL SCHOOL BOARD - Appellant(s)
Versus
SHAKUNTLABEN FOGATBHAI DESAI & 4 - Defendant(s)

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Appearance :
NANAVATI & NANAVATI for Appellant(s) : 1,
None for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 09/10/2006

ORAL JUDGMENT

1. Though the applications seeking interim relief have been listed for orders, but the parties submitted that they be heard finally.

2. With the consent of the parties, the matters are finally heard.

3. Being aggrieved by the judgment and decree passed by the learned trial court, the defendant respondent preferred appeals before the learned first appellate court which also came to be dismissed, therefore, the defendant is before this Court.

4. The appeal has been admitted for hearing on 19/7/2006 on the following substantial questions of law;

(i) Whether on the facts and in the circumstances of the case, the two Courts below were justified in granting the decree of interest in favour of the plaintiffs on the amount of arrears when, undisputedly, the arrears were to be paid by the District Panchayat and they had transmitted the arrears to the Municipal School Board, either in 1990 or 1991 and after receiving the amount,the School Board had at its earliest paid the amount to the other side?

5. Short facts leading to filing of the Regular Civil Suits were that all the respondents / plaintiffs were serving under the administration of Ahmedabad District Panchayat in its School Nos.1 and 2. They retired from their services on attaining the age of superannuation. It was submitted by the plaintiffs in each case that since their services were duly merged within the area of

Ahmedabad Municipal Corporation on and from 1/10/1975, they were entitled to recover all the arrears of salary etc. from the present appellant. It was also submitted that as per the Notification No.PCR/1275/69/M dated 21/10/1975 issued by the Finance Department, the appellant / defendant was bound to deposite the amount of pay difference in the Provident Fund Account of the respective plaintiff and as the said amount has not been deposited upto 13/9/1991, the plaintiffs would be entitled to interest on the said amount from 21/10/1975 to 13/9/1991 i.e. from the date of liability to the date of actual deposit.

6. The defendant appeared before the trial court and submitted that the plaintiffs have not made any complaint that they were not paid their salary from 1/10/1975 after they were absorbed as teachers in the Education Services of the Municipal Corporation. Their case plane and simple was that any amount due prior to 21/10/1975 could be deposited in favour of the plaintiffs in their Provident Fund Account if the amount was transmitted by the Ahmedabad District Panchayat in favour of the Ahmedabad Municipal Corporation, they

submitted that they received the amount on 24/12/1990 and within a short while i.e. on 13/9/1991, they deposited the amount and as such were not answerable to the claim made by the plaintiffs.

7. The trial court held that the plaintiffs would be entitled to interest from the Ahmedabad Municipal Corporation upto the date of the deposit. The order was confirmed in appeal, therefore, the Corporation is before this Court in these Second Appeals.

8. The submission of the learned counsel for the appellant was that the liability to make the deposit in the Provident Fund Account of the plaintiffs would accrue against the present appellant – defendant only when they received the amount from the erstwhile employer of the plaintiffs. According to him, prior to 1/10/1975, there was no relationship of employer and employee or master and servant between the plaintiffs and the defendant, therefore, the defendant was not liable to make the deposit. He submits that the learned courts below were absolutely unjustified in awarding the interest. Taking an exception to the arguments, learned counsel for the

respondents – plaintiffs submits that the very language of the Notification dtd.21/10/1975 would make the employer - defendant liable to make the deposit of pay difference in the Provident Fund Account of the plaintiffs and as on the date of the notification, the plaintiffs were in services of Ahmedabad Municipal Corporation, the courts below were justified in awarding the interest in favour of the plaintiffs.

9. Heard the learned counsel for the parties at length.

10. It is not in dispute before me that the plaintiffs were serving under the administration of Ahmedabad District Panchayat in School Nos.1 and 2, their services came to be transferred to Ahmedabad Municipal Corporation and they were absorbed as regular teacher in the Education Department of the Ahmedabad Municipal Corporation. W.e.f. 1/10/1975, relationship of master and servant or employer and employee came into being or in existence so far as the present parties are concerned. Prior to 1/10/1975, the parties had no relationship of employer and employee. Under the circumstances, if there were arrears or any dues on account of difference of salary

prior to 1/10/1975, the same was payable by the Ahmedabad District Panchayat and not by the Ahmedabad Municipal Corporation to whom the services of the plaintiffs were transferred.

11. Notification dtd.21/10/1975 issued by the Finance Department required the employer to make the deposit of the pay difference in the Provident Fund Account of the employee, it did not require the employer to deposit the same amount in the account of an employee with whom he had no relation prior to 1/10/1975.

12. In the opinion of this Court, the learned courts below were absolutely unjustified in directing payment of the interest from 21/10/1975 upto 13/9/1991 i.e. The date of the notification and the date of the actual deposit / payment.

13. The liability of the defendant to deposit the amount could accrue if there was any jural relationship of employer and employee or master and servant between the parties on the date when the right to recover the difference of pay accrued in favour of the plaintiffs.

14. It is not in dispute that the Ahmedabad District Panchayat had remitted the money to Ahmedabad Municipal Corporation on 24/12/1990. In the opinion of this Court, the liability of Ahmedabad Municipal Corporation to make the deposit in the Provident Fund Account of the plaintiffs would arise only on 24/12/1990, the payment was made on 13/9/1991. Under the circumstances, it must therefore be held that for the period for which the appellant kept the money with them, they would be answerable to pay interest on the amount. Accordingly, I hereby direct that the appellant would be liable to pay interest from 1/1/1991 to 13/9/1991 at the rate of 9.1/2% p.a. All the appeals to the extent indicated above are allowed. Let separate decree in each case be framed. Parties to bear their own costs through out.

15. In view of the final disposal of the appeals, no orders on Civil Applications are required. The same are accordingly disposed of.

rafik (R.S.GARG,J.)